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6 UNITED STATES DISTRICT COURT
7 EASTERN DISTRICT OF WASHINGTON
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10 ELVIS CAMILLO R. LOPEZ,

11 Petitioner,

12 v.

13 WASHINGTON STATE,

14 Respondent.
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4:17-cv-05011-SAB

**ORDER DISMISSING FIRST
AMENDED PETITION**

17 BEFORE THE COURT is Petitioner's First Amended Petition, ECF No. 9.
18 Petitioner, a *pro se* prisoner at the Airway Heights Corrections Center has paid the
19 full filing fee to commence this habeas action brought pursuant to 28 U.S.C.
20 § 2254. After review of the First Amended Petition, the Court finds that it lacks
21 jurisdiction over the named Respondent, District Court of the State of Washington
22 for Benton County.

23 As reiterated in *Rumsfeld v. Padilla*, 542 U.S. 426 (2004), "[i]n challenges to
24 present physical confinement, . . . the immediate custodian, not a supervisory
25 official who exercises legal control, is the proper respondent." *Id.* at 439. Petitioner
26 is challenging two sentences of 365 days each based on Alford pleas to two
27 charges of fourth degree assault in 2011. He is not asserting a claim involving
28 future custody. Rather, Petitioner indicates that his sentences ran concurrently with

1 another 2012 Benton County sentences of 132 months, ECF No. 9 at 13. “A
2 prisoner seeking release from confinement must sue his jailer.” *Rumsfield*, 542
3 U.S. at 438 (citations and quotations omitted).

4 The fact Petitioner has chosen to name a court as respondent, rather than his
5 present custodian at the Airway Heights Corrections Center, deprives this Court of
6 personal jurisdiction to consider his petition. *See Brittingham v. United States*, 982
7 F.2d 378, 379 (9th Cir. 1992); *Dunne v. Henman*, 875 F.2d 244, 249 (9th Cir.
8 1989). Therefore, **IT IS ORDERED** the Petition is **DISMISSED** for lack of
9 personal jurisdiction.

10 **IT IS SO ORDERED.** The Clerk of Court is directed to enter this Order,
11 enter judgment, and forward a copy to Petitioner. The Court further certifies that
12 pursuant to 28 U.S.C. § 1915(a)(3), an appeal from this decision could not be taken
13 in good faith, and there is no basis upon which to issue a certificate of
14 appealability. 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b).

15 **DATED** this 11th day of July, 2017.



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A handwritten signature in blue ink that reads "Stanley A. Bastian". The signature is fluid and cursive, with a horizontal line drawn underneath it.

22 Stanley A. Bastian
23 United States District Judge
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